Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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Strengthening the nuclear non-proliferation regime

Working paper submitted by France

The third session of the NPT Preparatory Committee takes place in a context characterized by several nuclear proliferation and non-compliance crises, which have left major questions unanswered, and emphasized new threats to international peace and security.

Cases of failure and non-compliance have been exposed over the past year, as well as the existence of an international network of trafficking in nuclear technologies ; North Korea has expressed its intention to withdraw from the NPT.
Corrective measures, in cooperation with the IAEA, have been taken in some cases.

The non-proliferation regime, and in particular the NPT Review Process, will have to demonstrate in the coming months its ability to adapt itself to such international security challenges while preserving the core principles of the NPT.

The constraints arising from the non-proliferation commitments of States Parties are balanced in the Treaty by the development of, and cooperation in, peaceful uses of nuclear energy. Civilian nuclear cooperation is only possible if States comply with all their obligations stemming from the Treaty. There is a risk however, that the recent proliferation and non-compliance crises may affect the confidence we put in the non-proliferation regime.

France reiterates its commitment to the right of all Parties to the NPT to civilian nuclear energy. France considers that a basic objective of the NPT is precisely to make the development of international cooperation in this field possible. Most analyses show that world energy needs will increase sharply in the coming years; nuclear energy will be in this context an essential contribution to sustainable development.

Given this background, France would like to share the views hereunder, which are based on the following principles:

- fostering the NPT and international institutions (UN, IAEA) through effective multilateralism;
- restoring the confidence of the international community;

- adopting an inclusive approach, and avoiding the creation of dividing lines among the international community.

I- Strengthening and universalizing the rules for sensitive equipment, giving new guarantees to States in good standing

- Universalization of the Additional Protocol and Comprehensive Safeguards Agreements

France, along with the EU and the G8, has called for and worked towards the universalization of the Additional Protocol and of Comprehensive Safeguards Agreements. France ratified its own Additional Protocol on April 10th, 2003.

➢ Having such a Protocol in force should rapidly become a standard

➢ In this connection, IAEA Member States have a responsibility to ensure that the Agency has adequate technical and financial means to carry out its statutory missions. The Agency should adapt and optimize safeguards implementation to fulfil its new missions.

- Preventing the risks stemming from the dissemination of sensitive technologies

Developing peaceful uses of nuclear energy and setting-up a nuclear power-generation program does not require, in the large majority of cases, sensitive and potentially proliferating technologies. At the same time, recent crises have demonstrated the need for strengthened export controls on those technologies or materials (enrichment, reprocessing, heavy water production facilities, equipment or related technologies, HEU, separated plutonium).

➢ The export of such materials, facilities, equipment or related technologies should only be envisaged in the light of the existence of a set of conditions relevant to the global non-proliferation regime and NPT objectives:

- an alleged energy need in the country;
- a credible nuclear power generation program and related fuel cycle needs;
- an economically rational plan for developing such projects;
- an Additional Protocol brought into force and implemented before any physical transfer or transfer of know-how;
- the highest standard of non-proliferation commitments;
- the effective and efficient implementation of an export control system with adequate sanctions;
- the highest standard of nuclear security and safety;
- an analysis of the stability of the country and the region concerned.

Such criteria would only marginally increase the effectiveness of the non-proliferation regime if they are restricted to the member-States of the NSG and Zangger Committee, which already have strict export controls in force. They should be adopted by all states concerned.

The effect of technological progress (e.g. "closed cycle" reactors) on the aforementioned conditions would have to be assessed in due time.

- Reinforcing States' responsibility

In addition, it is essential that all governments concerned adopt responsible policies regarding nuclear exports.

➢ *Steps should be taken so that all potential suppliers of sensitive nuclear technology, equipment and materials adopt voluntarily robust export controls along comparable guidelines. Consideration could be given to universal control norms based on Zangger Committee Understandings.*

➢ In addition, suppliers should commit themselves to linking any transfer of sensitive items (see above) and major transfers of non-sensitive items to NNWS to the signature of an inter-governmental agreement, thus creating a legal base and framework for such cooperation. Any such transfer not covered by such an agreement should be considered illegal and legal action should be taken in accordance with national regulations.

- Increased access to non-sensitive technologies; guarantees of access

Enhancing controls on exports of sensitive technologies should be balanced with an easier access, by States that may need them, in particular the developing countries, to non-sensitive equipment and technologies and nuclear cooperation.

➢ It would be appropriate, in this context, to review the balance of existing NSG rules with a view to avoiding unduly stringent rules on the transfer of non-sensitive equipment and facilities (e.g.: LEU reactors, control and command and other goods useful for the safety and security of nuclear power plants).

➢ Guarantees of access to services related to nuclear fuel, or to nuclear fuel, at market prices on a long term basis could also be given, through a collective declaration, or individual declarations, of supplying States back to back with commitments by the companies concerned, to countries that intend to pursue a nuclear power generation program for peaceful purposes without developing a comprehensive fuel cycle. Those countries should have a Comprehensive Safeguards Agreement and its Additional Protocol brought into force, with the cooperation of the IAEA. It would be made clear that such guarantees should avoid the creation of monopoly situations.

II- Taking action to prevent new breaches of confidence

- Compliance and international cooperation

➢ In order to strengthen Article IV of the NPT, nuclear cooperation should be suspended with States for which the IAEA cannot provide sufficient assurances that their nuclear program is devoted exclusively to peaceful purposes, until the IAEA provides such assurances. Suspension could be called for by the Agency's Board of Governors when, for example, the Director General reports, in a State:

- a situation of "serious breaches";

- a situation of "non-compliance";

- an "unacceptable risk of diversion";

- the impossibility, for the Agency, to carry out its mission

In the aforementioned cases, suspension – of all or part of the nuclear cooperation – would not be automatic when appropriate corrective measures are taken by the State, in cooperation with the IAEA.

➢ Suspension could be universalized and made mandatory for all States by a decision of the UNSC.

- Withdrawal

➢ In accordance with international law, a State that withdraws from the NPT (Article X) remains responsible for violations committed while still a party to the Treaty. This principle should be reaffirmed. The UNSC is the relevant international framework for taking decisions in such a context.

➢ Without prejudice to other measures that the UNSC may decide, a State that withdraws should – in any case – no longer make use of all nuclear materials, facilities, equipment or technologies acquired in a third country before its withdrawal. Such facilities, equipment and nuclear material should be returned to the supplying State, frozen or dismantled under international verification.

➢ Inter-governmental agreements setting the framework for sensitive or major nuclear transfers (see above) should include a clause forbidding the use of the transferred nuclear materials, facilities, equipment or technologies in case of a withdrawal. The same clause should apply also for materials or NSG trigger list items produced from, or with the help of, materials, equipment, facilities or technologies originally transferred.